

Sinco Technologies Pte Ltd. v. Sinco Electronics (Dongguan) Co. Ltd., *et al*

# APPENDIX B.2

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## DEFENDANTS' WITNESS LIST & PLAINTIFF'S OBJECTIONS

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*Attorneys for Defendants* XINGKE  
 ELECTRONICS (DONGGUAN) CO., LTD.,  
 formerly known as SINCO ELECTRONICS  
 (DONGGUAN) CO., LTD., LIEW YEW SOON  
 aka, MARK LIEW, NG CHER YONG. aka CY  
 NG, and MUI LIANG TJOA aka ML TJOA

**UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION**

SINCO TECHNOLOGIES PTE LTD.,

Plaintiff,

vs.

SINCO ELECTRONICS (DONGGUAN) CO.,  
 LTD.; XINGKE ELECTRONICS  
 (DONGGUAN) CO., LTD.; XINGKE  
 ELECTRONICS TECHNOLOGY CO., LTD.;  
 SINCOO ELECTRONICS TECHNOLOGY CO.,  
 LTD.; MUI LIANG TJOA (an individual); NG  
 CHER YONG aka CY NG (an individual); and  
 LIEW YEW SOON aka MARK LIEW (an  
 individual),

Case No. 3:17-CV-05517-EMC

Action Filed: September 22, 2017

**TRIAL WITNESS LIST [EXCHANGE  
 VERSION]**

Date: October 5, 2021

Time: 2:30 p.m.

Place: Courtroom 5, 17th Floor

**Judge: Honorable Edward M. Chen**

**Trial: November 1, 2021**

Pursuant to the parties' schedule for pretrial exchanges, Defendants provide this list of witnesses for trial. In addition to the substantive testimony generally described below, each witness may also testify on evidentiary issues concerning trial exhibits absent agreements between the parties on admissibility of trial exhibits. Defendants reserve the right to call a witness for any reason that makes his or her testimony necessary, including but not limited to if Plaintiff will not stipulate to the authenticity and/or admissibility of documents. Defendants also reserve the right to name additional witnesses if Plaintiff will not stipulate to the authenticity and/or admissibility of documents.

Defendants also reserve the right to supplement this witness list both during the Court's pretrial process and through and including at trial. Defendants make the following disclosures subject to and without waiving any and all privileges and protections (including the attorney-client privilege and work product doctrine), and the right to supplement, amend, or otherwise modify these disclosures, and preserving any and all objections to the admissibility of particular information. Defendants will meet-and-confer with Plaintiffs to discuss an agreed time to exchange time estimates for the parties' respective witnesses.

Witness	Substance of Testimony	Time Estimate
CY Ng (Defendant)	Ng is a Defendant and a senior engineer at XingKe. Ng was hired at XingKe's predecessor in 2003 and will testify that he was an employee of XingKe and not Plaintiff at all relevant times. He will describe how XingKe used the term "SinCo" over the years since 2003 before the company changed its name in 2017 and how the company interacted with Plaintiff during that time, including with respect to customers.	3 hours  (No translator)
Mark Liew (Defendant)	Ng is a Defendant and a senior engineer at XingKe, reporting up directly to CY Ng. Liew was hired at XingKe's predecessor in 2013 (after previously working at the company from 2006-2012) and will testify that he was an employee of XingKe and not Plaintiff at all relevant times. He will describe how XingKe used the term "SinCo" over the years since X before the company changed its name in 2017 and	3 hours  (No translator)

	how the company interacted with Plaintiff during that time, including with respect to customers.	
Mui Liang Tjoa (Defendant)	Tjoa is a Defendant and the former CEO of Jinlong Electronics & Machinery Co. Ltd. (“Jinlong”). Tjoa will testify about how Jinlong acquired XingKe in 2016 and 2017 via a series of transactions and how he helped XingKe develop business with respect to customers. He will describe how he directed the XingKe to change its name in early 2017.	3 hours (No translator)
Deqiang Liu	Liu is an employee of XingKe and is the general manager. Liu was hired at XingKe’s predecessor in 2001 and will testify that he was an employee of XingKe and not Plaintiff at all relevant times. He will describe the history and general business of XingKe, how XingKe used the term “SinCo” over the years before the company changed its name in 2017, and how the company interacted with Plaintiff during that time, including with respect to customers.	1.5-2 hours (Translator)
Jerry Yang Da Rui	Yang is an employee of Xingke in the engineering department since 2015 that SinCo SG alleges was an “embedded” employee. Yang will testify that he was an employee of XingKe and not Plaintiff at all relevant times. Yang will also testify about the business relationship with SinCo SG, including his interactions with Liew and Ng, and with respect to customers.	1 hour (Translator)
Gouki Gao	Gao is an employee of Xingke since 2009. Gao will testify about the business relationship with SinCo SG, including his interactions with Liew and Ng and with respect to customers.	1 hour (Translator)
Andy Lim and/or other unknown third party Google employees	Whether or not customer was confused as to source of good as being from Plaintiff or XingKe.	.5 hours.
Gabriel G. Khouri and/or other unknown third party Intel employees	Whether or not customer was confused as to source of good as being from Plaintiff or XingKe.	.5 hours.

1 2 3 4	Nick Guyot, Paul Carter, and/or other unknown third party Apple employees	Whether or not customer was confused as to source of good as being from Plaintiff or XingKe.	.5 hours.
5 6 7	Unknown third party Swiftronic employee	Whether or not customer was confused as to source of good as being from Plaintiff or XingKe.	.5 hours
8 9	Unknown third party Bose employee	Whether or not customer was confused as to source of good as being from Plaintiff or XingKe.	.5 hours
10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	Hank Kahrs (Expert)	<p>Kahrs is Defendants' rebuttal damages expert. As set forth in detail in his expert report dated January 30, 2020, and further articulated in his deposition, both incorporated herein, Kahrs will critique each of the opinions advanced by Plaintiff's damages expert Alan Cox.</p> <p>Lost Profits. Kahrs will testify that Cox's analysis regarding lost sales fails to consider evidence that customers were not confused by the alleged trademark infringement; that Cox likewise fails to consider other factors that may have resulted in decreased revenue; that Cox fails to calculate alleged lost profits by customer; and that in any event, Cox's regression analysis on which he predicates his calculation is itself flawed in multiple regards, including reliance on outlier data that distorts the underlying trend in the sales data and the unsupported assumption that fourth quarter sales typically increase.</p> <p>As for Cox's analyses regarding increased costs allegedly resulting in lost profits, Kahrs will testify that Cox's analysis is unsubstantiated by detailed analysis of costs, and therefore is not tailored to costs that are incremental or otherwise related to the trademark infringement; that Cox fails to account for inflation and other changes in prices that affect overhead or costs of goods sold; and that in any event, Cox fails to consider that any decrease in margins resulting from Defendants' decision no</p>	4 hours

longer to supply Plaintiff is not related to any claimed trademark infringement.

Unjust Enrichment. Cox estimates unjust enrichment by comparing the value of two transactions in which Defendant XingKe was sold, and ascribing the difference in value (\$100 million) as related to trademark infringement. Kahrs will testify that this analysis is simplistic and flawed, including because it fails to consider IRS guidance on the proper factors to consider in the valuation of a business interest, including the motivations of the different buyers and sellers, and the fact that each of the buyers was differently situated and therefore differently positioned to extract (and therefore ascribe) value to XingKe. Further, as with Cox's other analyses, Kahrs will testify that Cox fails to consider the extent to which value is properly ascribed to non-infringing activity.

Disgorgement. Kahrs will testify that, as with Cox's other analyses, Cox fails to consider the extent to which revenue is properly ascribed to non-infringing activity.

Dated: September 8, 2021.

ARNOLD & PORTER KAYE SCHOLER LLP

By: /s/ Douglas A. Winthrop  
DOUGLAS A. WINTHROP

*Attorneys for Defendants*  
XINGKE ELECTRONICS (DONGGUAN) CO.,  
LTD., formerly known as SINCO  
ELECTRONICS (DONGGUAN) CO., LTD.,  
LIEW YEW SOON aka, MARK LIEW, NG  
CHER YONG. aka CY NG, and MUI LIANG  
TJOA aka ML TJOA

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served a copy of the foregoing TRIAL WITNESS LIST [EXCHANGE] via email on September 8, 2021.

\_\_\_\_\_  
/s/





## Henry J. Kahrs, CPA, ABV, CFF, CFE, CMA, CM

Exhibit 1

Hank Kahrs is a Partner in the Global Forensics consulting practice at Baker Tilly.



**Baker Tilly Virchow Krause, LLP**  
**Partner, Global Forensics**  
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### Education

Bachelor of Science in Accounting  
Rochester Institute of Technology (Rochester, NY)

Master of Business Administration in Finance  
California State University, Fullerton (Fullerton, CA)

Hank Kahrs is a magnet for high-profile legal disputes filled with anomalies that require judgment and a nuanced understanding that can only come from experience. For the past 25 years, Hank has practiced as a forensic accountant and fraud examiner quantifying economic damages in complex commercial, civil and criminal cases. His career has seen him quantifying IP damages related to images of 1950s Hollywood royalty, working with rock stars in contract disputes, and valuing assets and businesses in diverse industries, including technology, medical devices, and manufacturing.

As an advisor and financial expert, Hank's judgment is respected and trusted by his clients. He has worked extensively with law firms serving as an expert in hundreds of cases, testifying in trials, arbitrations and depositions, and has been involved with cases involving the quantification of damages resulting from:

- Fraud schemes
- Business valuation
- Partnership and corporate dissolution
- Asset tracing
- Breach of contract
- Trademark and copyright infringements
- Contract and shareholder disputes
- Personal injury and wrongful death

Hank serves on the Board of Directors of the Coastline Community College Foundation and on the Blue Ribbon Committee for California State University.

### Specific experience

- Working on behalf of singer Josh Todd and the band Buckcherry, quantified economic damages in a legal dispute with the band's former manager following the breakup of the band. Our analysis enabled Josh to sever his personal services contract and to reunite Buckcherry, leading to the release of a new platinum album.
- Calculating the value of a publicly traded medical device company that specializes in the production of pain pumps in connection with a public merger transaction.





## Henry J. Kahrs, page 2

- Reviewing the books and records for a textile wholesaler in California whose owner was accused of arson when a fire damaged the business. Accounting irregularities including transfers of cash from personal accounts and false customer invoices were uncovered, indicating a financial motive for the arson. The engagement also involved the calculation of value of the damaged inventory and lost profits, and giving expert testimony at the criminal trial.
- Calculating the lost profits for a rubber manufacturing business in California that was destroyed in a fire. Analysis included the valuation of damaged inventory and equipment and the impact of extra expenses incurred in clean up and re-opening the business.
- Assisting in a trademark infringement case in California involving improper use of a trademark in advertising. Calculated the profits earned by the infringing party and assisted in the settlement negotiations when the infringer offered its business as part of the settlement. Also provided insight into the valuation issues to procure a better settlement.
- Calculating the fair market value of shares owned by an employee of a spa manufacturing company in California who had been bought-out based on fraudulent representations made by a majority shareholder. The damage calculation included profits not distributed to the shareholder, corrections to profits as a result of irregularities committed by the majority shareholder, and analyses of corporate contributions and underpayment to the employee for the value of the shares.

## Court experience

Hank has been named as an expert in hundreds of cases and has testified in trial, arbitration and in depositions. He has been retained by over 140 law firms in cases that involve loss of profits, real estate shareholder disputes, business valuation, lost earnings, fraud, bankruptcy, construction, contract disputes, corporate & partnership dissolution, marital dissolution, asset tracing, workers compensation insurance, embezzlement and intellectual property damages.

## Industry involvement

- Member, American Institute of Certified Public Accountants
- Member, California Society of Certified Public Accountants
- Member, Institute of Certified Management Accountants
- Member, Financial Management Honor Society
- Member, National Association of Forensic Economists
- Member, Association of Certified Fraud Examiners
- Candidate Member, American Society of Appraisers

## Community involvement

- Boys & Girls Club of Tustin, Board of Directors (2009 – 2019)
- California State University Blue Ribbon Committee (2012 – Present)
- Coastline Community College Foundation (2010- Present)

## Thought leadership

Hank has participated in seminars and presentations to colleagues and members of the insurance industry and legal profession through trade associations on topics such as investigative accounting, fraud, the measurement of economic damages, the economics of intellectual property, understanding financial statements, and using and cross examining experts. He has also authored and delivered numerous continuing legal and accounting education courses, including:

- "Cross Examining a Financial Expert," private law firm seminar, December 2015
- "Lie Spotting," private law firm seminar, February 2015



Henry J. Kahrs, page 3

- "Cross Examining an Expert," private law firm seminar, June 2014
- "If It's All About the Money, Which Expert is Right for You?," Litigation Management, Winter 2013
- "Forensic Accounting in Divorce Cases," private webinar, November 2013
- "Effective Use of an Expert," private law firm seminar, September 2013
- "Understanding Business Valuation," San Diego Bar Association, November 2012
- "Effective Use of an Expert," panel with Jan Ramsay & Kurt Grosz, Orange County Bar Association, May 2012
- "Understanding Financial Statements," Orange County Bankruptcy Forum, March 2012
- "The Economics of Intellectual Property," Webster University, March 2012
- "Adjustments in Divorce Assignments," private law firm seminar, March 2011
- "Reading & Understanding Financial Statements," California State Bar Association, January 2011

**Continuing professional education and credentials**

- Certified Public Accountant
- Accredited in Business Valuation
- Certified in Financial Forensics
- Certified Fraud Examiner
- Certified Management Accountant
- Candidate Member, American Society of Appraisers

**SUMMARY OF SPEAKING ENGAGEMENTS**

Henry J. Kahrs, CPA, CMA, MBA, CFE

Exhibit 2

Date	Given To	Topic
September 26, 1991	Orange County Insurance Adjusters	Business Interruption Losses
October 4, 1991	San Diego Insurance Adjusters	Extra Expense & Coinsurance
May 14, 1992	San Diego Insurance Adjusters	Business Interruption Losses
March 27, 1993	Campos & Stratis Training	Insurance Policies - Inventory & Business Interruption
April 28, 1994	Von-Pahlen-Fedoroff, Attorneys	Personal Injury Loss Claims
July 19, 1994	Callahan, McCune & Willis	Personal Injury Loss Claims
July 25, 1994	Safeco Insurance Company	Business Interruption & Inventory Losses
November 21, 1994	Center For Professional Education	Forensic Accounting: The CPA's Role In Litigation Support
December 8, 1994	Allstate Insurance Company	Personal Injury Loss Claims
May 9, 1995	Miscellaneous Orange County Attorney's	Prevention & Detection Of Employee Dishonesty
May 14, 1995	Campos & Stratis Partners Meeting	Personal Injury Loss Claims
June 22, 1995	Law Offices Of Vivian Schwartz	Accountants Role In Litigation/Personal Injury Loss Claims
February 5, 1996	Kirtland & Packard	Accountants Role In Litigation/Personal Injury Loss Claims
March 7, 1996	National General Insurance Company	Lost Earnings
May 1, 1996	Los Angeles Adjusters	Time Element Losses
March 11, 1997	Farmers Insurance Group	Liability Loss Claims
April 24, 1997	Sedgwick, Detert, Moran & Arnold	Liability Loss Claims
June 5, 1997	Optimists Club Of Cerritos	Prevention & Detection Of Employee Dishonesty
June 19, 1997	OCBA - Construction Section	Using A Trustee In Construction Defect Claims
June 25, 1997	Rotary Club Of Orange (Sunrise)	Prevention & Detection Of Employee Dishonesty
July 22, 1997	Rotary Club Of Orange (North)	Prevention & Detection Of Employee Dishonesty
September 18, 1997	Cal. Society Of CPA's	The CPA As An Expert Witness
October 23, 1997	Orange County RIMS/CPCU	Business Interruption & Inventory/Stock Losses
October 23, 1997	Tucker, Ricks & Horton-Billard	Approaching Personal Injury & Wrongful Death Claims
December 4, 1997	Sedgwick, Detert, Moran & Arnold	Business Interruption & Inventory/Stock Losses
February 27, 1998	OCBA - Insurance Section	Using A CPA As An Expert In Insurance Litigation
March 12, 1998	Palmieri, Tyler, Wilhem, Wiener & Waldron	Understanding Financial Statements & Damages
April 15, 1998	Kiwanis Club Of Orange	Prevention & Detection Of Employee Dishonesty
April 29, 1998	Lawson, Macrae, Gress & Culbertson	Approaching Personal Injury & Wrongful Death Claims
August 7, 1998	CNA/Law Offices Of Daniel Hoffman	Approaching Personal Injury & Wrongful Death Claims
August 11, 1998	Safeco	Business Interruption & Inventory/Stock Losses
November 11, 1998	KUCI Radio	Forensic Accounting In The Nineties
November 20, 1998	OCBA - Aviation Section	Approaching Personal Injury & Wrongful Death Claims
December 11, 1998	Robins, Kaplan, Miller & Ciresi	Understanding Business Valuations
December 15, 1998	OCBA - Intellectual Property Section	Understanding The Economics Of Patent Infringement Cases
February 11, 1999	Gauntlett & Associates	Understanding The Economics Of Patent Infringement Cases
March 10, 1999	Crosby, Heafey, Roach & May	Lost Earnings - Personal Injury
March 11, 1999	Century City Bar Association	Understanding Business Valuation
August 6, 1999	OCBA - Business Litigation Section	Devastating Cross Examination Of Expert Witnesses
August 23, 1999	OCBA - Creditor's Rights Section	Business Valuation & Insolvency Analysis
September 7, 1999	OC Women's Lawyers	Understanding Business Valuation
November 18, 1999	OCBA - Solo Practitioners	Innovative Ways to Use An Expert Accountant
March 24, 2000	OCBA - Insurance Section	Identifying Insurance Fraud
April 13, 2000	CGU Insurance	Introduction To Loss Calculations
May 6, 2000	State Bar Assoc. - Champions of The Courtroom	Expert Witness
August 23, 2000	Palmieri, Tyler, Wilhem, Wiener & Waldron	Understanding Business Valuation
August 28, 2000	Galfin & Passon	Understanding Financial Statements & Damages
August 30, 2000	Berger, Kahn	Understanding Financial Statements & Business Interruption Losses
October 2, 2000	Clausen Miller LLP	Business Interruption & Inventory/Stock Losses
October 10, 2000	CNA/Law Offices Of William Chopak	Effective Handling Of BI, Liability & Personal Injury Loss Claims
October 25, 2000	Lawson, Macrae, Gress & Culbertson	Approaching Personal Injury & Wrongful Death Claims
March 2001	RGL Seattle	Litigation Support
March 14, 2001	Smith, Eberhard, Chock	Approaching Personal Injury & Wrongful Death Claims
January 2002	CNA Insurance Companies	Approaching Personal Injury & Wrongful Death Claims
May 19, 2004	The Soni Law Firm	Understanding The Economics Of Patent Infringement Cases
June 24, 2004	Elliot, Snyder & Reid	Calculating Damages for Personal Injury Matters
July 8, 2004	Erenstein, Russell & Saltz LLP	Valuing a Business
October 5, 2004	Rein, Evans & Sestanovich LLP	Cross Examining an Expert
December 14, 2004	Sonnenschein, Nath & Rosenthal	Cross Examining an Expert
February 16, 2005	Luce, Forward, Hamilton & Scripps LLP	Damages In Business Litigation
February 24, 2005	Tress, Soderstrom, Maloney & Preiss	Understanding the Economics of Intellectual Property Cases
April 20, 2005	Luce, Forward, Hamilton & Scripps LLP	Cross Examining an Expert
May 4, 2005	Lewis, Brisbois, Bisgaard & Smith	Calculating Damages for Personal Injury Matters
May 6, 2005	Bistine & Cohoon	Cross Examining an Expert
June 10, 2005	Cal. State Society/Cal. Bar Assoc. - Litigation Section (LA)	Valuation Issues In Income Taxes
June 17, 2005	Cal. State Society/Cal. Bar Assoc. - Litigation Section (OC)	Valuation Issues In Income Taxes
July 27, 2005	Filice, Brown, Eassa & McLeod LLP	Cross Examining an Expert
October 5, 2005	Walsworth, Franklin, Bevins & McCall LLP	Cross Examining an Expert
October 17, 2005	Stephan, Oringer, Richman & Theodora PC	Cross Examining an Expert
October 26, 2005	Morgan & Finnegan (New York)	Understanding the Economics of Intellectual Property Cases

**SUMMARY OF SPEAKING ENGAGEMENTS**

Henry J. Kahrs, CPA, CMA, MBA, CFE

Exhibit 2

Date	Given To	Topic
January 19, 2006	Breidenbach, Huchting & Hamblet	Damages In Business Litigation
January 31, 2006	Johnson, Cebula & Rygh	Cross Examining an Expert
February 7, 2006	Callahan McCune & Willis	Cross Examining an Expert
March 2, 2006	Roble & Matthal	The Use of an Expert Witness
March 9, 2006	Wood, Smith, Henning & Berman LLP	Cross Examining an Expert
March 22, 2006	Anderson, McPharlin & Connors LLP	The Use of an Expert Witness
August 15, 2006	Law Offices of Linda M. Libertucci	Damages in Personal Injury Litigation
August 29, 2006	Carlson, Calladine & Peterson LLP	Reading and Understanding Financial Statements
September 6, 2006	Law Offices of Hollins Schechter	Cross Examining an Expert
October 5, 2006	California State Bar Association	Cross Examining an Expert
November 2, 2006	Corral, Chase, Parish & Arnett	Personal Injury and Wrongful Death Cases
November 15, 2006	Harrington & Kang LLP	Damages in Business Litigation
November 30, 2006	Harrington & Kang LLP	Damages In Business Litigation
December 7, 2006	Wright, Finlay & Zak LLP	Cross Examining an Expert
April 12, 2007	Keesal, Young & Logan	Damages In Business Litigation
May 1, 2007	Keesal, Young & Logan	Damages In Business Litigation
September 7, 2007	Sedgwick, Detert, Moran & Arnold	Cross Examining an Expert
March 12, 2008	Clausen Miller LLP	Understanding Financial Statements & Basic Business Income Loss Claim Concepts
May 15, 2008	Littler Mendelson PC	Evaluating Economic Losses in Personal Injury, Wrongful Death and Wrongful Termination
May 16, 2008	Various Law Firms & Adjusters (Pacific Palms Conference Resort)	Accounting Issues in Business Interruption Losses/Loss of Earnings
May 16, 2008	Various Law Firms & Adjusters (Pacific Palms Conference Resort)	Interviewing/Deposing a Damages Expert
June 3, 2008	Hinshaw & Clubertson	Cross Examining an Expert
September 18, 2008	California State Society of CPA's	Understanding Business Valuation
September 25, 2008	California State Bar Association	Reading Between The Lines Of A Financial Statement
November 3, 2008	Geurts Law Firm	Cross Examining an Expert
December 5, 2008	Sedgwick, Detert, Moran & Arnold	Understanding Business Valuation
April 29, 2009	Computer Forensics Show	Introduction to Forensic Accounting
April 30, 2009	RGL Valuation Training	Forensic Accounting Litigation Services
May 13, 2009	RGL Valuation Training	Damages in IP Cases
May 4, 2010	Erickson Arbutnot	Cross Examining an Expert
May 5, 2010	Berger, Kahn	Damages in Personal Injury Litigation
July 19, 2010	Russakow, Ryan & Johnson	Cross Examining an Expert
August 23, 2010	Russakow, Ryan & Johnson	Cross Examining an Expert
January 27, 2011	California State Bar Association	Reading & Understanding Financial Statements
March 2, 2011	Bremer & Whyte	Adjustments in Divorce Assignments
March 1, 2012	Webster Univeristy	The Economics Of Intellectual Property
March 2, 2012	RGL St. Louis	The Economics Of Intellectual Property
March 6, 2012	OC Bankruptcy Forum	Understanding Financial Statements
May 18, 2012	OC Bar Association	Effective Use of An Expert - Panel With Jan Ramsay & Kurt Grosz
November 28, 2012	SD Bar Association	Understanding Business Valuation
April 16, 2013	Morris, Polich & Purdy	Effective Use of An Expert
September 27, 2013	Callahan & Blaine	Effective Use Of An Expert
October 9, 2013	CPE Direct	Understanding Business Valuation
November 15, 2013	RGL Webinar	Forensic Accounting In Divorce Cases
June 18, 2014	Gordon & Rees	Cross Examining an Expert
September 16, 2014	Alvarado Smith	Lie Spotting
February 23, 2015	Keesal Young & Logan	Lie Spotting
May 21, 2015	Lewis, Brisbois	Cross-Examining A Financial Expert
June 18, 2015	Arent Fox	Cross-Examining A Financial Expert
December 11, 2015	Gordon & Rees - Orange County	Cross-Examining A Financial Expert
November 8, 2017	CSUF - Intermediate Accounting Classes	Introduction to Forensic Accounting
April 10, 2018	Wilson Elser	Cross-Examining A Financial Expert
April 26, 2018	Gordon & Rees - LA	Cross-Examining A Financial Expert
May 16, 2018	Smith, Smith & Feeley	Cross-Examining A Financial Expert

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Attorneys for Plaintiff  
 SINCO TECHNOLOGIES PTE LTD

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

SINCO TECHNOLOGIES PTE LTD,

Plaintiff,

v.

SINCO ELECTRONICS (DONGGUAN) CO.,  
 LTD.; XINGLE ELECTRONICS  
 (DONGGUAN) CO., LTD.; XINGKE  
 ELECTRONICS TECHNOLOGY CO., LTD.;  
 SINCOO ELECTRONICS TECHNOLOGY  
 CO., LTD.; MUI LIANG TJOA (an  
 individual); NG CHER YONG aka CY NG (an  
 individual); and LIEW YEW SOON aka  
 MARK LIEW (an individual),

Defendants.

Case No. 3:17CV5517

**PLAINTIFF SINCO TECHNOLOGIES  
 PTE LTD'S OBJECTIONS TO  
 DEFENDANTS' TRIAL WITNESS  
 LIST [EXCHANGE VERSION]**

PRETRIAL HEARING

Date: October 5, 2021

Time: 3:00 p.m.

Place: Courtroom 5 – 17<sup>th</sup> Floor  
 Hon. Edward M. Chen

TRIAL DATE

November 1, 2021

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that Plaintiff, SINCO TECHNOLOGIES, PTE, LTD.  
 (“SINCO” OR “Plaintiff”), submits the following objections to Xingke Electronics (Dongguan)  
 Co., Ltd.; Mui Liang Tjoa; Ng Cher Yong; and Liew Yew Soon (herein “DEFENDANTS”)  
 Witness List of **September 9, 2021**. DEFENDANTS’ Witness list is direct violation of the Court  
 Order of **June 13, 2019** and **January 10, 2020**. DEFENDANTS' witness list does not comply  
 with Judge Chen’s **February 1, 2021** 3rd Amended Case Management and Pretrial Order for Jury  
 Trial as to the information required under section 6.

**OBJECTIONS TO DEFENDANTS' EXHIBIT LIST**

SINCO specifically Objects to Defendants' violation of Federal Rules of Civil Procedure ("FRCP") 26 and 37. FRCP 26(a)(1)(A)(i) requires a party to disclose "*the name and, if known, the address and telephone number of each individual likely to have discoverable information ... that the disclosing party may use to support its claims or defenses.*" Rule 37 gives teeth to this requirement, stating that if "*a party fails to provide information or identify a witness as required by Rule 26(a) ... the party is not allowed to use that information or witness to supply evidence ... at a trial, unless the failure was substantially justified or is harmless.*" Fed. R. Civ. P. 37(c)(1). This is because "[t]he last thing a party or its counsel wants in a hotly contested lawsuit is to make last-minute preparations and decisions on the run." *Ollier v. Sweetwater Union High Sch. Dist.*, 768 F.3d 843, 863 (9th Cir. 2014). The party facing exclusion of evidence has the burden of showing that the failure to disclose was justified or harmless. *Yeti by Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101, 1107 (9th Cir.2001). This is not harmless when these witnesses should have been disclosed years ago and before the close of discovery, which would have given SINCO's adequate time to prepare and cross examine the potential testimony. Fact discovery in this case was open for years, but DEFENDANTS sat on these disclosures until months after the fact discovery cut-off. Rule 26 requires the disclosure of individuals with information that a party may use to support its claims or defenses. It is not limited to individuals that will be offered by a party at trial. The Rule further requires that each party must supplement or correct this initial disclosure "in a timely manner if the party learns that in some material respect the disclosure ... is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing..." *Id.* at 26(e)(1)(A). The Rule is not satisfied simply by disclosing the name of an individual in some other context during discovery. *Pinterest, Inc. v. Pintrips, Inc.*, 2015 WL 2268498, at \*5 (N.D. Cal. May 14, 2015). Rule 26(a)(1)(A)(i) requires a party to identify "the name and, if known, the address and telephone number" of individuals with information that the party "may use to support its claims or defenses." SINCO objects to the unnamed references in DEFENDANTS' witness list for third party's Swiftronic and Bose. "Even absent a showing in the record of bad faith or willfulness,



exclusion is an appropriate remedy for failing to fulfill the required disclosure requirements of Rule 26(a).” *Yeti by Molly Ltd* 259 F.3d at 1106.

Courts have routinely held that a belated disclosure is not “substantially justified” when it concerns an “essential issue” to the case which is not newly raised by the opposing party’s actions. See, e.g., *Orellana v. Cty. of Los Angeles*, 2013 WL 12129290, at \*6 (C.D. Cal. June 26, 2013) (“Because these witnesses plan to testify concerning this essential issue, [party] cannot claim that her failure to disclose them was substantially justified, as she knew or should have known of the relevance of their testimony at all times after the commencement of this action.”); *Hagan v. California Forensic Med. Grp.*, 2009 WL 689740, at \*1 (E.D. Cal. Mar. 5, 2009) (no substantial justification because, where element was “essential” to claim, “plaintiffs cannot seriously contend that prior to the County’s motion for summary judgment, plaintiffs ‘did not contemplate’ that they would need to provide evidence on this issue”). Defendants disclosure of the third party witnesses on **May 21, 2020**, 133 days after the close of fact discovery, in addition to being untimely these disclosures were inadequate as to provide notice of the identity of witnesses for Google, Intel, Apple, Swiftronic, Motorola, and Bose or comply with FRCP 26 and 37. DEFENDANTS’ indicate that these witnesses will testify, “whether or not customer was confused as to source of good as being from Plaintiff or XingKe,” which is an essential element of the asserted claims by the Plaintiff. Likewise, SINCO objects to DEFENDANTS Witness list of **September 9, 2021**, which restates the supplemental disclosures provided months after the fact discovery cut-off as to Google, Intel, Apple, Swiftronic, and Bose.

DEFENDANTS’ belated disclosure was not harmless because Plaintiff was unable to adequately respond to DEFENDANTS’ newly identified witness as fact discovery had already closed. According to the scheduling order in this action, fact discovery closed on **January 9, 2019**. [ECF 225]

5. NON-EXPERT DISCOVERY CUT-OFF: 1/9/2020

6. EXPERT REPORTS: Opening reports by 1/9/2020  
 Rebuttal reports by 1/30/2020

7. EXPERT DISCOVERY CUT-OFF: 2/6/2020

The Court rejected DEFENDANTS effort to expand the scope of discovery, on **January 10, 2019**, 132 days before DEFENDANTS submitted these surprise supplemental Initial Disclosures.

When SINCO first received notice of Andy Lim, Gabriel G. Khouri, Nick Guyot, or Paul Carter as DEFENDANTS' witness in this case, SINCO had no ability to conduct fact discovery, had no chance to designate one or more of the other dozen or more employees associated with Google, Intel, Apple, Swiftronic, or Bose as rebuttal witnesses on the topic. After "the discovery cutoff has passed, the party cannot conduct discovery without a court order permitting extension. This in turn threatens whether a scheduled trial date is viable and impairs the ability of every trial court to manage its docket." *Ollier v. Sweetwater Union High Sch. Dist.*, 768 F.3d 843, 863 (9th Cir. 2014).

In determining whether to preclude the introduction of evidence pursuant to Rule 37, courts consider: "(1) the surprise to the party against whom the evidence would be offered; (2) the ability of that party to cure the surprise; (3) the extent to which allowing the evidence would disrupt the trial; (4) the importance of the evidence, and (5) the nondisclosing party's explanation for [the] failure to disclose the evidence." *San Francisco Baykeeper v. W. Bay Sanitary Dist.*, 791 F.Supp.2d 719, 733 (N.D.Cal.2011). In this case, all five factors weigh in favor of excluding Andy Lim, Gabriel G. Khouri, Nick Guyot, and Paul Carter. As discussed above, all four witnesses were disclosed after the discovery cut-off and again on the eve of trial through the DEFENDANTS' pretrial witness lists and DEFENDANTS have failed to provide a compelling explanation for their delay. Moreover, DEFENDANTS cannot "cure" the surprise of these new witnesses (which would entail deposing the belatedly identified witnesses and amending pretrial submissions in light of the new information) without significantly disrupting the trial proceedings, which begin in less than two months.

DEFENDANTS' WITNESS	DEFENDANTS' DESCRIPTION OF SUBSTANCE OF TESTIMONY	PLAINTIFF'S OBJECTION
Andy Lim and/or other unknown third party Google employees	Whether or not customer was confused as to source of good as being from Plaintiff or XingKe.	FRCP 26 and 37. Lack of Notice as to "unknown employees."

DEFENDANTS' WITNESS	DEFENDANTS' DESCRIPTION OF SUBSTANCE OF TESTIMONY	PLAINTIFF'S OBJECTION
Gabriel G. Khouri and/or other unknown third party Intel employees	Whether or not customer was confused as to source of good as being from Plaintiff or XingKe.	FRCP 26 and 37. Lack of Notice as to "unknown employees."
Nick Guyot, Paul Carter, and/or other unknown third party Apple employees	Whether or not customer was confused as to source of good as being from Plaintiff or XingKe.	FRCP 26 and 37. Lack of Notice as to "unknown employees."
Unknown third Party Swiftronic employee	Whether or not customer was confused as to source of good as being from Plaintiff or XingKe.	FRCP 26 and 37. Lack of Notice as to "unknown employees."
Unknown third party Bose employee	Whether or not customer was confused as to source of good as being from Plaintiff or XingKe.	FRCP 26 and 37. Lack of Notice as to "unknown employees."

SINCO objects as to all witnesses in DEFENDANTS' disclosures as it fails Rule 26(a)(3)(A)(i) requiring a party to separately identify those the party expects to present and those it may call. As written DEFENDANTS' list appears to assert that all listed witnesses WILL be called as live testimony, SINCO requests that DEFENDANTS confirm that this is their intention.

Dated: September 9, 2021

Respectfully submitted,

ROPERS MAJESKI PC

By: /s/ Lael D. Andara

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